

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:14-CT-3031-F

On January 27, 2014, Plaintiff filed this action pursuant to 42 U.S.C. § 1983, alleging that Defendants violated his constitutional rights. Compl. [DE-1]. Courts must review complaints in civil actions in which prisoners seek relief from a governmental entity or officer, and dismiss a complaint if it is “frivolous, malicious, or fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915A(a)-(b)(1). A case is frivolous if it “lacks an arguable basis either in law or in fact.” Neitzke v. Williams, 490 U.S. 319, 325 (1989).

As an initial matter, Plaintiff has filed a motion to amend his complaint [DE-9]. Under Federal Rule of Civil Procedure 15(a)(1)(B), a plaintiff may amend his complaint once as a matter of course within 21 days after the earlier of (1) service of a responsive pleading or (2) service of a motion under Rule 12(b), (e), or (f). Defendants have not yet been served in this matter, and therefore have not filed a responsive pleading. Accordingly, Plaintiff's motion to amend [DE-9] is ALLOWED, and all of his filings have been considered by the court during its frivolity review.

It does not clearly appear from the face of the complaint [DE-1] that this claim is frivolous. Thus, the court will allow the case to proceed, and the Clerk of Court is DIRECTED to maintain

management of Plaintiff's claims. As noted above, Defendants have not yet been served, therefore Plaintiff's motion for default judgment [DE-6] is DENIED as premature. Finally, the court further ORDERS as follows:

1. The clerk shall manage the action pursuant to Standing Order 14-SO-02.
2. If service on any Defendant pursuant to the standing order fails, the court DIRECTS the United States Marshal Service to make service pursuant to 28 U.S.C. § 1915(d).

SO ORDERED. This the 5 day of November, 2014.



JAMES C. FOX
Senior United States District Judge